

SUPERSEDING DOCUMENT

Delegation (and/or extension) of Authority

for

New Source Performance Standards (NSPS)

and

National Emission Standards for Hazardous Air Pollutants (NESHAPS)

by the

U.S. Environmental Protection Agency, Region VII

to the

State of Nebraska

under

§111 and §112 of the Clean Air Act (CAA)

(Effective Date: As specified below)

On November 24, 1975 and August 5, 1981, (and in subsequent superseding, extension and/or amending actions), the EPA Region VII office delegated to the State of Nebraska authority to implement and enforce certain standards promulgated by the Environmental Protection Agency under 40 CFR Part 60 (NSPS) and 40 CFR Part 61 (NESHAPS), respectively. Each delegation (and/or extension) action was granted by the regional office after the state had formally adopted the standards in question and had subsequently requested the delegation (or extension) action.

To eliminate the time lag which currently exists between the state's adoption of additional standards and the agency's delegation of authority to implement and enforce the adopted standards, I hereby delegate to the State of Nebraska the authority to implement and enforce, without the previously required submittal of a formal request of the Governor (or of the Governor's designated representative on such matters), all future NSPS- and NESHAPS-related standards adopted by the state, upon adoption, as well as the authority to implement and enforce all currently adopted standards, within the state, subject to the conditions set forth below.

The primary purpose of this agreement is the establishment of procedures under which concurrent authority to implement and enforce additional federal standards will be automatically delegated to the

State of Nebraska upon the incorporation of the additional standards, by the state, into the state's air pollution control rule(s), if the conditions of the agreement are met. Unless superseded, this agreement is intended to cover past delegation of authority actions granted by the agency as well as recent adoptions by the state that were not formally acted upon by the agency under the superseded procedures, if any, and all future adoptions of additional standards by the state. As such, this document supersedes all NSPS- and NESHAPS-related delegation and extension of authority letters previously issued to the State of Nebraska by the EPA, Region VII, office.

The source categories and hazardous air pollutants that were the subject of the superseded letters are listed in Attachment A of this document. The agency will periodically update a similar list (Attachment B) for all future automatic delegations of authority which occur under the terms of this superseding document.

This delegation of authority is subject to the following conditions unless subsequently jointly amended for any reason by the EPA regional office (i.e., the Director, Air and Waste Management Division, U.S. EPA; Region VII (or equivalent, if reorganized)), and the Department (i.e., the Director of the Nebraska Department of Environmental Control (or equivalent if reorganized) or the Director's designated representative on the matters addressed below):

1. Unless subdelegated under Condition 4, enforcement of the NSPS and NESHAPS regulations in the State of Nebraska shall be the primary responsibility of the Department.

2. Pre-adoption Notification: The Department shall provide the EPA regional office with a notification of the state's intention to adopt additional standards (and/or to update its NSPS or NESHAPS rule(s)). A written notification shall be provided for each proposed adoption action and shall be postmarked no later than thirty (30) calendar days prior to the public hearing on the proposed action or, if a hearing is not held, no later than thirty (30) calendar days prior to the anticipated date of the adoption action.

Adoption Notification: The Department shall also provide the EPA regional office with a written notification of each adoption of additional standards by the state (and of each general updating of the state's NSPS- or NESHAPS related rules(s)) within thirty (30) calendar days of the effective date of each said future adoption (or updating) action.

This document shall not be operative with respect to said additional (or amended) standards and/or provisions if the Department fails to notify the EPA regional office as directed above.

3. The EPA regional office will inform the Department that it will take action to withdraw the delegation of any standard which will occur under this document if it determines, prior to the state's adoption action, that the Department does not have adequate

procedures (as discussed in EPA's delegations manual) to implement or enforce the standard(s) in question. In such instances, the regional office will notify the Department of said action prior to the public hearing, or if a hearing is not held, prior to the anticipated date of the adoption action.

4. Upon receiving the prior approval of the EPA regional office, the Department may, within the scope of the state's adopted rule(s), subdelegate authority to implement and/or enforce the NSPS and/or NESHAPS regulation(s) to any local air pollution control agency in the state, when the local agency has demonstrated that it has an equivalent or more comprehensive program in force. When subdelegating authority, the state and/or Department must retain concurrent enforcement authority at least up to the level of stringency of the state's adopted rule(s).

Subdelegations which were granted prior to the effective date of this document remain in force and are not affected by this condition.

5. With respect to all facilities (and activities) affected by the state's NSPS or NESHAPS rules, unless otherwise directed by the regional office, the Department shall implement and enforce all delegable provisions of the federal regulations relating to the adopted standards as in effect on (1) the date that is specifically set forth in the state's rule(s), or (2) the effective date of the rule(s) in question, whichever applies. Said provisions include, but are not limited to, the general requirements of Subpart A (e.g., notification, performance test, maintenance requirements, circumvention, monitoring requirements, source test and analytical methods, etc.); the standards, monitoring, reporting, and compliance determination requirements that specifically apply to the various source categories (and activities) for which the state has adopted standards; and, the various requirements of the appendices of 40 CFR Part 60 (NSPS) and 40 CFR Part 61 (NESHAPS).

Examples of federal provisions which cannot be delegated (or subdelegated), and which are not herein delegated, are the approval of alternative or equivalent performance test methods or of alternative emission monitoring certification methods, the granting of site-specific alternative opacity standards (40 CFR 60.11(e)), the granting of commercial demonstration permits under 40 CFR 60.45a, the granting of innovative control technology waivers under §111(j) of the Clean Air Act, the approval of equivalency proposals concerning design, equipment, or work place type standards (e.g., 40 CFR 61.66), and the approval of custom nitrogen fuel allowance or ambient condition correction factors for stationary gas turbines under 40 CFR 60.22(j) and (1) and 40 CFR 60.23.

This delegation does not authorize the state or the Department to issue any waivers (or variances) from a substantive requirement of either 40 CFR Part 60 or 40 CFR Part 61. The Department shall notify the EPA regional office in writing of each request the state or Department receives for a variance (or waiver) from any requirement of the NSPS or NESHAPS regulations. Neither the state nor the

Department shall grant a variance or waiver without first contacting the EPA regional office to ascertain whether there is any legal authority to grant a waiver or variance of the type requested and whether any such authority is reserved to EPA.

6. The Department shall ensure that the EPA regional office receives information regarding communications required to be submitted to the Administrator under 40 C.F.R. 60.4(a) and 40 C.F.R. 61.04(a) via either automated data transfer to the National Compliance Data System, or manually by submitting a copy of each required communication by either the Department or by the affected source.

7. On matters pertaining to requests for applicability determinations received by the Department, the EPA regional office shall provide assistance, comments, and/or issue formal applicability determinations, on a case-by-case basis, when requested to do so by the Department. With regard to applicability determinations issued by the Department, the Department shall send to the regional office a copy of each determination letter and of related documents (including correspondence between the company involved and the Department). Said material shall be sent to the regional office within a reasonable period of time after each determination is issued.

8. To ensure compliance with the public availability requirements of 40 CFR 60.9 and 40 CFR 61.15, each request for information pertaining to sources or activities affected by the state's NSPS or NESHAPS rule(s) with which the Department cannot comply because of its (or the state's) confidentiality restrictions, shall be forwarded to the EPA regional office.

9. The Department and the EPA regional office shall continue to maintain a system of communication sufficient to guarantee that each office is always fully informed regarding the compliance status of the subject sources, of enforcement actions taken (or being contemplated) by the offices involved, and of interpretations of the regulations to which NSPS or NESHAPS review procedures apply. At a minimum, this includes a prompt response to each others verbal or written request for information and input into the CDS system.

10. Any NSPS- and/or NESHAPS-related requirement promulgated by the EPA, but not yet adopted by the State, will be enforced by the EPA. Similarly any requirement adopted by the state, which is later determined by judicial decision or otherwise, to be unenforceable by the State (e.g., an improper adoption of a standard by the state, etc.) will be enforced by the EPA regional office.

11. If the EPA regional office determines that a Department procedure for enforcing or implementing any adopted standard (or standards) is inadequate, or is not being effectively carried out, and/or if the EPA regional office determines that the Department has an inadequate program (as discussed in EPA's delegations manual) with respect to any adopted standard, this delegation of authority may be revoked in whole or in part. If deficiencies are found in the Department's procedures or program, the EPA regional office will notify the


Department of the deficiencies, may specify (or suggest) appropriate corrective measures, and will allow the Department a reasonable period of time to implement corrective measures. If the deficiencies continue to exist after the allotted time, the EPA regional office may revoke the delegation as discussed above. The regional office will notify the Department of its intent to revoke the delegation, and will state the reason(s) for the intended action, at least fifteen (15) calendar days prior to the effective date of the action.

12. The EPA retains concurrent authority to implement and/or enforce all provisions of the delegated regulations. The agency shall give the Department prior notification before it exercises its concurrent authority.

13. If it is necessary to obtain an injunction against the operation of a source found to be in violation of the NSPS or NESHAPS, the approach provided in Section 81-5108(3) of the Nebraska statute should be used. The direct approach of Section 81-5108 is preferable because it permits an injunction to be obtained without the lengthy administrative hearing process, which may result if Rule 24 and Section 81-5107 are followed.

END OF THE NUMBERED CONDITIONS

If the State or the Department determines that it can (or will) no longer implement or enforce the NSPS and/or NESHAPS regulations for any reason, it may request, by letter, that the delegation be revoked in whole or in part. To ensure a smooth transfer of primary enforcement responsibilities, the Department shall continue to enforce the delegated provisions until the regional office formally acts on the revocation request, unless the circumstances of the situation absolutely dictate otherwise.


Dennis Grams
Director
Nebraska Department of Environmental Control

7-24-84
Date


David A. Wagoner
Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region VII

8/7/84
Effective Date